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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,655	04/21/2004	Sebastian Huther	H01.2-11538	4913
490	7590	02/15/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			HURLEY, KEVIN	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/828,655

Applicant(s)

HUTHER, SEBASTIAN

Examiner

Kevin Hurley

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1 line 13, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claims 1 and 4 recites the limitation "said wheel arm" (singular). There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka EP 1150124 in view of Nagata et al. 6,940,415.

Otsuka discloses a fork-lift reach truck having a driving portion 14 and a mast portion 20

Art Unit: 3611

wherein said driving portion has at least one steerable rear driving wheel 12 driven by a drive motor 27, and a steering motor to steeringly operate said driving wheel, and two load-carrying front wheels 11 which are rotatably supported in parallel-spaced wheel arms 15, hydraulic drum braking devices 38 for said load-carrying wheels, and a control device 29 for controlling said drive motor, said steering motor, and said braking devices in dependence on the actuation of control elements in said fork lift reach truck, characterized in that each load-carrying wheel or a ring shaped disc 34 mounted on said load-carrying wheel, laterally in a circumferential direction and at a uniform spacing, has teeth, elevations and/or slots 34a, and that said wheel arm has fixed thereto a proximity sensor 30 which, upon rotation of said load carrying wheels, in a speed-dependent way generates sensor pulses which are inputted to said control device, said ring shaped disc is mounted on the inside of said load carrying wheel, said ring shaped disc is screwed, pasted or riveted to or pressed into said load-carrying wheel; said wheel arms having a longitudinal profile formed from a turned over metal sheet and a support rail 21 at the inside of said longitudinal profile, an axle pivot pin 31 supporting said load carrying wheel is supported in said support rail and a parallel spaced metal sheet of said longitudinal profile, and the proximity sensor is fixed to the underside of said support rail near a free end of said wheel arm; characterized in that the side facing said driving portion, on said brake, has mounted thereon a protective component 40 for a sensor cable and brake cables 45 between said brake and said support rail wherein said cables are guided in the wheel arm up to said protective component and is guided to said underside of said support rail and is mounted there.

Otsuka fails to disclose the use of an electromagnetic brake.

Nagata et al. teaches that an electromagnetic brake can be used in place of a hydraulic

Art Unit: 3611

brake, see col. 11 lines 31-39, the two being art recognized equivalents. The Nagata et al. brake includes a ring-shaped brake magnet 142 firmly attached to the inside of said wheel arm and extends into the interior of a load carrying wheel and interacts with an axially movable brake disc 144 rotating along with said load carrying wheel.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the electromagnetic brake disclosed by Nagata et al. for the hydraulic brake in Otsuka, the two being art recognized equivalents.

Allowable Subject Matter

5. Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose fork lift vehicles with wheel sensors.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Hurley whose telephone number is 571-272-6646. The examiner can normally be reached on Monday-Friday 9:30-5:00.

Art Unit: 3611

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin Hurley
Primary Examiner
Art Unit 3611

February 11, 2006